

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LONTEX CORPORATION	CIVIL ACTION
v.	NO. 18-5623
NIKE, INC.	

PRETRIAL ORDER

AND NOW, this 22nd day of April, 2021, following review of the Pretrial Memoranda (ECF 246, 249) in this trademark case brought under the Lanham Act and related state laws, and a recorded conference call with counsel on April 21, for reasons stated on the record, the following pre-trial filings and other events are scheduled as follows. In these filings, counsel may cite to exhibits already submitted, but no exhibits may be attached. All response briefs are due within fourteen (14) days unless otherwise specified. No reply briefs will be allowed unless specifically requested by the Court.

1. **Bifurcation:** Defendant shall file a Motion for Bifurcation as to liability and damages no later than May 4. Briefs are limited to ten (10) pages.
2. **State Law Claims:** Plaintiff shall file a brief by May 4 outlining for each of the state laws under which it is bringing a claim:
 - a. The elements that Plaintiff must prove and relief available, and how each of those elements and forms of relief are or are not overlapping with the Lanham Act;
 - b. A statement of how each of these claims is timely;
 - c. A statement of how it plans to present any evidence concerning each of these state laws at trial and how the Court should instruct the jury on this issue; and

- d. Addressing any choice of law issues.
 - e. Briefs on this Motion are limited to fifteen (15) pages.
3. **Exhibits:** The parties shall serve any trial exhibits not already exchanged by June 1. Each party shall number its exhibits in a sequential manner starting with No. 1 and continuing. The parties may adopt certain categories of documents using different numbered series. Each separate document shall have a separate number. Plaintiff shall file an updated exhibit list by July 15, and any updated response from Nike is due by July 30.
- (a.) Each party is encouraged to prepare accurate summaries or charts, compiling data from the exhibits which have been produced in this case which shall be served by August 3, 2021.
4. **Motions in Limine:** The Court prefers that each party file a single Motion in Limine with a general introduction and then discussing each separate ground for the Motion in a concise fashion. Plaintiff's Motion shall be filed no later than June 15. Defendant's response, and Defendant's Motion, shall be filed no later than July 15. Plaintiff's response shall be filed no later than July 30. Page limit for each brief - (20) pages.
5. **Depositions and Witnesses:** The Court will not require either party to produce witnesses in the courtroom unless that party intends to call the witness. However, because Plaintiff must go first, Plaintiff shall be prepared to introduce deposition testimony of any Nike Officer/Employee unless there is an explicit written agreement by Nike to produce that individual in the courtroom during Plaintiff's presentation of evidence.

- a. As to depositions already taken, designations for use at trial under Fed. R. Civ. P. 32 shall be served by May 21. Objections and counter designations are due June 21. Objections to counter designations are due June 30. Any Motions on these matters shall be filed by July 15. Briefs limited to (10) pages.
 - b. Depositions not yet taken, for use at trial, for witnesses who may not appear at trial for any reason, shall be noticed by May 30, and taken no later than July 30, preferably by video, unless the witnesses consent to appear “live”.
 - c. Considerations of public health, travel, expense, and fairness will govern these issues at trial.
6. **“Cool Compression”:** The Court reminds counsel that any evidence regarding Plaintiff or Nike’s clothing or advertisements, etc. will be strictly limited to those items that use the words “cool compression” unseparated by other words, unless either party can show that any other usage is relevant to an issue in the case in which event briefs on this issue shall be filed by July 9. Page limit is (10) pages.
7. **Jury Instructions and Verdict Forms:** Proposed jury instructions and jury verdict forms shall be filed by September 30.
8. **Trial Date:** Pending resolution of a schedule conflict for one counsel, the Court has set October 14, 2021 for jury selection in this case with testimony to begin on Monday, October 18, 2021, subject to any pandemic restrictions that may still be in effect. Trial will begin at 9:00 am and continue to 4:30 pm each day, with an hour for lunch. Side bars are not permitted because experience has shown that matters that counsel wish to raise at sidebar during the trial can almost always be

raised the day before the adjournment of the jury, prior to court starting, or over the lunch hour, or after the trial is adjourned for the day.

9. **Sequestration** – each party may designate one person, other than counsel, to sit in the courtroom solely for the limited purpose of assisting with trial logistics.

Otherwise all witnesses will be segregated until their testimony is completed.

10. **Confidential Information:** Although raised in one of the pretrial memoranda but not discussed at the conference, although a protective order for confidentiality is in existence for pretrial matters, it does not apply at trial and absent an act of Congress authorizing a court to restrict public access to any evidence or testimony, the Court will not do so.

BY THE COURT:

/s/ MICHAEL M. BAYLSON

MICHAEL M. BAYLSON, U.S.D.J.